IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1762 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order mJJJJJ : NO

JJJJJJ

Deputy Conservator of Forest, Vyara.

According to the petitioner, on 9.4.1984, the staff of the Navapur Range of Maharashtra State seized a truck in Dokari and Umaram road during patrolling and when they found that the truck was transporting illegal forest timber derived from the forests of Gujarat, possession of the truck was handed over to the RFO, Nessu, 53 teak timber pieces were found in the truck and a Bullet Motor Cycle No.MXN/4084 was found piloting the whole operation. Since the timber found loaded in the truck was from the forests of Gujarat State, the possession of the truck was handed over to the RFO, Nessu who had in turn declared the offence by his FCR No.3/84-85 dated 10.4.1984. Confiscation proceedings under section 61-A and section 61-B of the Indian Forest Act,1927 read with Gujarat Amendment 19 of 1983 were initiated. The Deputy Conservator of Forest, Vyara after completing inquiry by his order dated 8.10.1984 ordered the truck to be confiscated. The owner of the truck filed Criminal Appeal in the District & Sessions Court, Surat being Criminal Appeal No. 98 of 1984 against the said order. The learned Sessions Judge remanded the case to the competent authority. The Deputy Conservator of Forest after giving an opportunity of hearing to the respondents again passed a fresh order dated 18.6.1990 and ordered the truck to be confiscated. Being aggrieved by the said order, the respondent no.3 filed Criminal Appeal in the Sessions Court at Surat being Criminal Appeal No. 57 of 1990. The learned Sessions Judge by his judgment and order dated 5.9.1991 partly allowed the appeal and modified the order of confiscation and substituted penalty of Rs.15,000/- for the order of confiscation.

The State of Gujarat has filed this petition against the said order of the learned Sessions Judge.

The learned Sessions Judge took the view that compared to the value of timber which was Rs.30,000/- as per panchnama the order of confiscation of the truck imposed on the owner was disproportionate in view of the fact that the owner was only an abetter. He therefore modified the order of confiscation and substituted the order of penalty of Rs.15,000/- to be paid by the owner of the truck.

The only contention which is advanced on behalf of the petitioner at the time of final hearing is that the learned Sessions Judge had no power to modify the order passed by the Deputy Conservator of Forest for

confiscation of the vehicle in which the forest produce was being transported without pass or permit. However, this issue is concluded against the petitioner in the cse of State of Gujarat Vs. Shantilal Mansukhlal Mistry & Others, (36(1)GLR 860) in which the learned Single Judge while negativating the contention held as follows in para 8 of the decision :

"8.It appears that though the submissions of the learned APPs is attractive, it cannot be said that the learned Sessions Judge or the Addl.Sessions Judge had committed an error of law in modifying the order passed by the Deputy Conservator of Forests. The relevant provisions of the Act as inserted by the Indian Forest (Gujarat Amendment) Act,1983, read as under :

'61A.Confiscation by Forest Officers in certain cases :-

(1) xxx xxx xxx
(2) Where the authorised officer seizes under sub-sec.(1) of Sec.52 any forest produce which is the property of the State Government or where any such property is produced before the authorised officer under sub-sec.(1) and he is satisfied that a forest offence is committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commissions of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats vehicles and cattle used in committing such offence.

(3) xxx xxxx xxxx

"61D Appeal :-(1) Any person aggrieved by any order passed under Sec.61A or Sec.61C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity of being heard to the appellant and the authorised officer or the officer specially empowered under Sec.61C, as the case may be, pass such order as he may think fit confirming, modifying or annulling the order appealed against."

A combined reading of these statutory provisions leads this Court to hold that the authorised officer, namely, the Deputy Conservator of Forests, "may" order confiscation of the property seized together with the vehicle used in committing such offence. Thus, the authorised officer is not under compulsion to confiscate the vehile or the goods but he will take into consideration all the relevant facts like value of the forest produce as well as the vehicle and the background and the mode in which the offence was committed. That is why the Sessions Judge is empowered under Sec.61D to confirm, modify or annul the order of the authorised officer. If confiscation by the authorised officer is compulsory under the relevant provisions of law, no appeal would be provided against such an order. Thus, the latitude given to the authorised officer is subject to the appeal before the judicial Court which would have a similar latitude in examining all the relevant facts, and in confirming or modifying or annulling the order of the authorised officer. That is really the essence of the appellate jurisdiction."

Hence, it cannot be contended that the Sessions Judge has no power to modify the order of confiscation while hearing and deciding the appeal under section 61-B of the Indian Forest Act. The petition therefore fails and is accordingly dismissed. Interim relief stands vacated. Rule discharged.

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m.m.bhatt